

No. 01-20-00004-CR & No. 01-20-00005-CR

In the Court of Appeals for the
First District of Texas at Houston

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
8/11/2020 10:46:16 PM
CHRISTOPHER A. PRINE
Clerk

Ex parte

JOSEPH ERIC GOMEZ,
Appellant

On Appeal from Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

**APPELLANT'S RESPONSE TO
STATE'S EMERGENCY MOTION FOR "IMMEDIATE
CONSIDERATION AND DECISION" OF STATE'S MOTION TO
STAY MANDATE**

TO THE HONORABLE COURT OF APPEALS:

Comes now Joseph Eric Gomez, Appellant, by and through under-
signed counsel, and submits this response in opposition to the State's
Emergency Motion for "Immediate Consideration and Decision" of
State's Motion to Stay Mandate filed today, August 11, 2020.

1. Appellant has no doubt that this Court is well-aware of its obliga-
tion to act promptly under Rule 31 of the Texas Rules of Appellate

Procedure. Appellant admittedly made that obligation painfully evident in his filings prior to this Court issuing its opinion in this case.

2. Now it is the State that is declaring that an “emergency” exists that requires this Court to immediately consider and determine its motion for stay of mandate — a motion that only came after Applicant filed his response to the State’s previous Emergency Motion to Withdraw Mandate, pointing out that the State failed to comply with Rule 31.4’s requirements pertaining to a stay of mandate.
3. Appellant first submits that no “emergency” exists. Appellant was released from custody on his reinstated, original bonds totaling \$40,000.00 in the early morning hours of Saturday, August 8. Upon his release, he immediately returned to his parents’ home where he will continue to reside and remain aside from searching for employment and other essential purposes. He has had no contact whatsoever with the complaining witness or her sister as originally ordered by the trial court — and has no desire to have any contact with them. *See* Supplemental Clerk’s Record at 11–12.

Most importantly, Appellant has every intention of appearing in court as directed to fight the accusations against him. There is no “emergency.”

4. Counsel for Appellant submits that adequate time is needed to respond to the State’s Motion to Stay Mandate Pursuant to Rule 31.4 filed yesterday, August 10. Counsel have deadlines in other cases that need their attention. For example, a trial court entered findings of facts and conclusions of law on an application for writ of habeas corpus (filed pursuant to Article 11.072, Texas Code of Criminal Procedure) just yesterday that requires counsels’ immediate attention. Counsel further have responsibilities in other cases. As for the response in this case, not only does counsel for Appellant have to reply to the State’s motion in and of itself, but also must review, research, and prepare a response to the State’s Petition for Discretionary Review to the Texas Court of Criminal Appeals attached to their motion as required by Rule 31.4 (which the State did not file with its initial filing to withdraw the mandate).
5. Counsel for Appellant have every intention of working diligently to prepare and file a response to the State’s Motion to Stay Man-

date and can assure this Court that it can have a response filed before the Friday, August 21, 2020 deadline. Counsel hopes to file Appellant's response by Monday, August 17, 2020.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests this Court deny the State's Emergency Motion for "Immediate Consideration and Decision" of State's Motion to Stay Mandate and permit Appellant adequate time to file his response.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on August 11, 2020.

/s/ T. Brent Mayr _____
T. Brent Mayr
ATTORNEY FOR
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